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August 11, 1997

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY COURIER

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William F. Caton, Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

EX PARTE PRESENTATION

Re: **Telecommunications Services Inside Wiring, CS Docket No. 95-184**

Dear Mr. Caton:

On behalf of ICG Telecom Group ("ICG") and in accordance with the instructions contained in the July 18, 1997 Public Notice (DA 97-1519), we submit the following written ex parte presentation concerning nondiscriminatory access to buildings

Attached are comments ICG is filing in response to the above referenced Public Notice in CCBPol Dkt. No. 97-9. The comments address the merits of CS Dkt. No. 95-184. This ex parte presentation is submitted in accordance with § 1.1206 of the Commission's rules. If you have any questions concerning this matter, please contact me at (202) 828-2226.

Thank you for your consideration.

Sincerely,

Albert H. Kramer /CTM

Albert H. Kramer

AHK/CTM:smp
Attachment

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Commission Actions Critical to the Promotion of Efficient Local Exchange Competition	)	CCB/POL 97-9

COMMENTS OF ICG TELECOM GROUP, INC.

Cindy Z. Schonhaut
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(303) 575-6533

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In the Matter of	)	
Commission Actions Critical to the Promotion of Efficient Local Exchange Competition	)	CCB/POL 97-9

COMMENTS OF ICG TELECOM GROUP, INC.

ICG Telecom Group, Inc. ("ICG"), hereby submits its comments in response to the Public Notice (DA 97-1519, released July 18, 1997) in the above-captioned matter. ICG is the third largest facilities based competitive local exchange carrier ("CLEC") in the United States. Using advanced communications technology, ICG currently operates networks in several states, including a significant presence in major metropolitan areas of California, Colorado, and the Ohio Valley. ICG provides services both to carriers and to end users, and offers switched as well as dedicated services to its customers.

ICG supports the comments filed by the Association for Local Telecommunications Services ("ALTS") in this matter. ALTS has correctly identified some of the essential steps the Commission must take to help establish and speed local competition. ICG endorses the priorities and emphases of the ALTS comments.

ICG submits these additional comments to highlight two areas that require special attention. One area is the patchwork of emerging and burdensome local franchising practices and management practices over local rights of way. The second area is the need for CLECs to be able to access buildings in order to be able to reach customers on a nondiscriminatory basis.

1. Local Franchising.

The Commission must clarify that Section 253 of the Act, 47 U.S.C. § 253, in empowering the Commission to preempt state and local regulation, imposes substantive limitations on the manner in which state and local authorities exercise their control over public rights of way. State and local authorities must limit the controls they impose over public rights of way to measures designed to address legitimate public health and safety concerns. The control over public rights of way cannot be used as a source of revenue generation; rather in order to satisfy Section 253, the fees that are imposed, and the methods of calculating those fees, must be related to the costs imposed on the localities by the actual use of the public right of way.

A distinct phenomenon from the issue of excessive cost recovery -- although sometimes part and parcel and directly linked to the payment of fees for the use of public rights of way -- is the proliferation of local franchising requirements as a precondition to

the provision of local telecommunications services by CLECs. These franchise fees are seldom related to the costs of providing services. Many of these franchise requirements are tied to the gross revenues of the CLEC. Some have conditions, such as "most favored nation" clauses for services provided to the locality by the CLEC, that are totally unrelated to the costs incurred to provide service.

Further, these franchise requirements are often applied in a discriminatory manner, with the incumbent local exchange carrier ("ILEC") being grandfathered or obtaining more favorable fees due to a pre-established arrangement or contract. The Commission must make it crystal clear that *any* franchise requirements and *all* controls over public rights of way must be competitively neutral -- on their face, in practice as applied, and in terms of impact.

The Commission can address these issues by acting promptly on pending petitions seeking preemption. It is important for the Commission to clarify that these practices directly contravene Section 253 standards and are prohibited. These practices are creating a double barrier to entry. First, they create a whole new layer of regulation to be overcome. In addition, they create a significant and often insurmountable (as well as often discriminatory) economic barrier to entry. As such, they effectively prohibit competition.

2. Building Access

Closely related to the issue of access to public rights of way but raising entirely distinct issues is the need for Commission action to address access to buildings.

Historically, the Commission has recognized the need for competitive access to building infrastructure. In a series of rulings, the Commission recognized that it was necessary to allow access to and break the ILEC monopoly over access to building wire to stimulate competition to LEC provisioning of customer premises equipment and to increase user choice. See, e.g., Detariffing the Installation and Maintenance of Inside Wiring, CC Dkt. No. 79-105, Memorandum Op. and Order on reconsideration, FCC Rcd 1190, 1195 (1986). So too, a competitive environment for local exchange services requires access to customers in multi-tenant buildings to be able to bring services to them.

Increasingly, however, landlords are employing their control over buildings to impose a system of "private" franchising that is as effective in delaying the advent of competition as the burdensome franchising and right of way requirements of localities, as discussed above. Like the franchising requirements of localities, the "building" franchises are often discriminatorily dispensed by building owners, thus limiting the ability of tenants to choose a local telecommunications services provider.

While a few states have addressed this issue through local statutes by requiring nondiscriminatory access to building facilities, there is a need for a more comprehensive review by the Commission. The Commission currently has pending two dockets where this issue could be addressed, a Further Notice of Proposed Rulemaking in CC Dkt. No. 88-57, Review of Sections 68.104 and 68.213, FCC 97-209 (June 17, 1984), and

an open docket in CS Dkt. No. 95-184, Telecommunications Services, Inside Wiring; Customer Premises Equipment, 11 FCC Rcd 2747 (1996).[1] To the extent these open proceedings are not adequate to address these issues, the Commission should start a new proceeding. But it is necessary for the Commission to clarify that building owners may not use their control over building facilities to stifle competition in local exchange services.

The Commission should clarify that while building owners are entitled to fair compensation for the use of their facilities, see, e.g., Loretto v. Teleprompter Manhattan CATV, 458 U.S. 419 (1982), but they are not entitled to exorbitant "rents." The compensation that building owners extract from CLECs for facilities to access customers must be fair, just and reasonable.

Dated: August 11, 1997

Respectfully submitted,

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By: Cindy Z. Schonhaut /CTM
Cindy Z. Schonhaut

[1] Indeed, in the Further Notice of Proposed Rulemaking in Docket 88-57, the Commission specifically observed that it may address this issue in the open proceeding in CS Dkt. No. 95-184. FCC 97-209 at ¶ 2.